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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,262	02/27/2004	Martin Deitch	CHA920030034US1	9375
23550 7590 10/06/2008 HOFFMAN WARNICK LLC 75 STATE STREET 14TH FLOOR ALBANY, NY 12207				
EXAMINER PATEL, SHAMBHAVI K				
ART UNIT 2128		PAPER NUMBER		
NOTIFICATION DATE 10/06/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOCommunications@hoffmanwarnick.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/789,262

**Applicant(s)**

DEITCH, MARTIN

**Examiner**

SHAMBHAVI PATEL

**Art Unit**

2128

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 15 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1,2,4,5,7,9,10,12 and 14.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 16-21.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Kamini S Shah/  
Supervisory Patent Examiner, Art Unit 2128

Continuation of 5. Applicant's reply has overcome the following rejection(s): 35 U.S.C. 101 and the prior art rejection of claims 1, 2, 4, 5, 7, 9, 10, 12 and 14.

Continuation of 11. does NOT place the application in condition for allowance because: Examiner notes that in view of Applicant's amendments, the 35 U.S.C. 101 rejection is withdrawn, and claims 1,2,4,5,7,9,10,12 and 14 are allowed because the prior art of record does not disclose calculating a time slice percentage for the LPAR based on the resource percentage and CP (central processor) data, wherein the time slice percentage = ((resource percentage) x (# of physical CPs))/(# of logical CPS). Applicant's arguments regarding claims 16-21 have been fully considered but are not persuasive. Applicant submits, on pages 16-17 of the remarks, that Rooney does not disclose "feeding the observed consumption back to the other models" because Rooney only shifts the processor capacity from one partition to another. Examiner notes the section titled "Processor Weight-Management Algorithms: Data Collection" of the Rooney reference. Rooney discloses a peer-to-peer relationship where there is not master WLM making the decisions for the whole LPAR cluster. Each member of the LPAR cluster has the performance data for the other members of the LPAR cluster, and can thus determine which partitions are exceeding their consumptions. Amended claim 20 is rejected under 35 U.S.C 103(a) as being unpatentable over Rooney ("Intelligent Resource Director", 2002) in view of Buttlar ("z/CECSIM: An Efficient and Comprehensive Microcode Simulator for the IBM eServer z900" 2002). For further detail regarding the teachings of the references over the claimed limitations, Applicant is directed to the rejection of claim 16 in the Office Action dated 28 July 2008.